

CHESHIRE EAST COUNCIL

Governance and Constitution Committee

Date of Meeting: 21st January 2010
Report of: Democratic Services Manager
Subject/Title: Member Access to Part II and Confidential Reports

1.0 Report Summary

- 1.1 This report provides information upon existing rights of access for Members to Part II and confidential reports and makes recommendations as to how the Council's approach should be reflected in the Constitution.

2.0 Recommendations

- 2.1 Council be recommended to agree that the following categories of members of the Council will generally be entitled to receive copies of Part II and confidential reports:

- Members of the body in question and those Members who can demonstrate to the Borough Solicitor that they "need to know" in order to properly carry out their duties as a Councillor
- Ward Members, where there is specific relevance of a report to issues to the Ward in question
- The Chairman of the relevant scrutiny committee
- Members visiting the meeting in question (who would receive the papers when they arrive at the meeting).

Provided that: where a report contains specific information on an officer, only Members of the body in question will receive copies of the report

- 2.2 Council be recommended to authorise the Borough Solicitor to make such changes and additions to the Constitution as he considers are necessary in order to give effect to the wishes of Council.

3.0 Reasons for Recommendations

- 3.1 In order for Members and officers to clearly understand the Council's approach to the availability to Members of Part II and confidential reports.

4.0 Wards Affected

- 4.1 All Wards are affected.

5.0 Local Ward Members

- 5.1 All local Ward Members are affected.

6.0 Policy Implications

- 6.1 The Council's agreed arrangements should be reflected in the Constitution which clearly sets these out.

7.0 Financial Implications for Transition Costs

- 7.1 There are no such implications.

8.0 Financial Implications 2009/10 and beyond

- 8.1 There are no such implications.

9.0 Legal Implications

- 9.1 The legal implications are contained within the main body of this report.

10.0 Risk Management

- 10.1 By clearly setting out in the Constitution the way in which the Council deals with Member rights of access to Part II and confidential reports, risk is minimised. Members will be clear as to their own rights and officers will be clear upon how the Council's arrangements should apply to Members.

11.0 Background

- 11.1 Most reports which are presented to the Council's decision-making and other bodies are freely available to inspection by Members and members of the public. However certain reports, which officers believe contain "exempt information" or confidential information may be held back from public circulation because the contents appear to meet certain statutory criteria eg they contain information about the financial or business affairs of an individual, or information about a proposed prosecution. A number of these statutory exempt categories of information are set out in the Constitution, in the Access to Information Procedure Rules, page 236. The effect of these rules, introduced to reflect the provisions of legislation, has been to substantially reduce the amount of exempt business.
- 11.2 The final decision upon whether such reports will be dealt with by the decision-making body in private is made by the body itself when it considers the standard agenda item: "Exclusion of the Public and Press". If this is moved,

seconded and agreed by the body in question, the report will be dealt with in private and the report will remain unavailable to the public and press.

- 11.3 The situation in respect of access to such report by Members of the Council is, however, different. Over many years, court cases have established clear principles relating to the rights of Members to Part II and confidential reports. These principles are summarised in the following paragraphs.
- 11.4 Members of the body in question are generally entitled to receive copies of Part II or confidential reports. However, where a Member is not a member of that body, there is no automatic right of access. Where this is the case, the Member must demonstrate a “need to know” such information in order to properly carry out duties as a Councillor.
- 11.5 A judgement has, therefore, to be made in each case of a request being made by a non-member of the decision-making body in question: does the Member requesting access to the report have a need to know, in order to properly carry out their duties as a Councillor? The decision on whether there is a need to know is for the Council to make and the courts are reluctant to interfere. The Constitution delegates that decision to the Borough Solicitor to avoid having a Member meeting every time a request is received.
- 11.6 Even membership of the relevant body or committee does not entitle Members to see all confidential information relevant to a particular matter but it does entitle Members to see the confidential reports.
- 11.7 Members have recently expressed a wish to widen the categories of cases where they automatically receive Part II reports. In addition to the committee members, reports in hard copy could be made available to:
- Ward Members affected, in accordance with the Ward Member Protocol.
 - Relevant scrutiny committee Chairmen.
 - Members visiting the meeting in question, who would receive the papers when they arrive at the meeting to enable them to read the contents in advance).

Provided that: where a report contains specific information on an officer, only Members of the body in question will receive copies of the report

- 11.8 It is proposed that the Constitution should make reference to the categories of Members, as set out above, in order for Members and officers to be clear upon the way in which reports will be dealt with.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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